

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

UNITED STATES OF AMERICA

v.

Criminal No. 1:12-00159

AMANDA MCPHERSON

MEMORANDUM OPINION AND ORDER

Pending before the court are defendant's motion for continuance and the United States' motion to schedule a guilty plea hearing. (Doc. Nos. 30, 31). The court GRANTS the motions for the reasons that follow.

In support of his motion, defendant's counsel states that the parties have reached an agreed-upon resolution to the matter, but defendant's counsel has been unable to see defendant due to logistics with the West Virginia Department of Corrections. (Doc. No. 31 at ¶ 1). Consequently, defendant's counsel believes the parties will need additional time to allow defense counsel to meet with the defendant and to allow the government to continue trial preparation.

Subsequent to the filing of the defendant's motion, the Government filed a motion requesting a guilty plea hearing. (Doc. No. 31). Trial is scheduled for Wednesday, November 12

and tomorrow is a federal holiday. Furthermore, the court has yet to receive a copy of the proposed plea agreement.

The court believes that failure to grant the requested continuance would likely prejudice defense counsel's ability to adequately represent the defendant. Because failure to grant the requested continuance would likely result in a miscarriage of justice, the court finds that the ends of justice outweigh the best interest of the defendant and the public in a speedy trial under 18 U.S.C. § 3161(h)(7)(A), and GRANTS the defendant's motion for continuance. In deciding to grant defendant's motion, the court considered the factors outlined in 18 U.S.C. § 3161(h)(7)(B) and finds that denying the motion "would deny counsel for the defendant . . . the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." 18 U.S.C. § 3161(h)(7)(B)(iv). Additionally, pursuant to 18 U.S.C. § 3161(h)(1)(G), "delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government" is excludable under the Speedy Trial Act.

Accordingly, the court **ORDERS** as follows:

1. The parties shall file with the court a copy of the proposed plea agreement;

2. A plea hearing in this matter is scheduled for Tuesday, November 25, 2014, at 10:00 a.m., in Bluefield;
3. Trial of this action is continued until Wednesday, November 26, 2014, at 9:30 a.m., in Bluefield;
4. Pursuant to 18 U.S.C. § 3161(h)(7)(A), the time from the filing of defendant's motion until the trial is excludable for purposes of the Speedy Trial Act.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of record, to the United States Marshal for the Southern District of West Virginia, and to the Probation Office of this court.

It is so **ORDERED** on this 10th day of November, 2014.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
Senior United States District Judge